SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

DANIEL MADISON, BEVERLY DUBOIS, and DANNIELLE GARNER,	)	**NO. 04-2-33414-4 SEA**
Plaintiffs,	)	**MEMORANDUM DECISION**
v.	)	
STATE OF WASHINGTON, CHRISTINE O. GREGOIRE, Governor, and SAM REED, Secretary of State, in their official capacities,	)	
Defendants.	)	

INTRODUCTION

Article VI, Section 3 of the Washington State Constitution provides that the right to vote does not extend to those "convicted of infamous crimes unless restored to their civil rights." The Washington Legislature has defined "infamous crime" to mean any offense "punishable by death…or confinement in a state correctional facility" or, in other words, any felony offense. RCW 29A.04.079. The Legislature has also provided that a felon's civil rights, including the right to vote, may be restored by a governor's pardon or upon the issuance of a certificate of discharge (RCW 9.96.010 and RCW 9.94A.637(4) respectively). The latter may only issue when the felon

has completed "all requirements of the sentence, including any and all legal financial obligations." RCW 9.94A.637(1)(a).

Plaintiffs Daniel Madison, Beverly DuBois and Dannielle Garner have filed this action for declaratory relief against the State of Washington, the Secretary of State, Sam Reed and Governor Christine Gregoire. They ask the court to find that above-described method of restoring a felon's right to vote is unconstitutional because it conditions re-enfranchisement on the payment of legal financial obligations (LFOs). They contend that the statute impermissibly discriminates among citizens, specifically among those convicted of felony offenses, on the basis of wealth. They allege that the statute violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution and Article I, Sections 12 and 19 of the Washington State Constitution.[1]

This matter is before the court on the parties' cross motions for summary judgment. The plaintiffs ask that a judgment be entered granting the requested relief, while the defendants ask for judgment dismissing plaintiffs' complaint. Summary judgment is appropriate where the record reveals no genuine dispute as to any issue of material fact and the moving

[1] Article I, Section 12 provides: No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations. Section 19 provides: All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

party is entitled to judgment as a matter of law. *Brower v. State*, 137 Wn.2d 44, 52 (1998). Since neither party disputes any material fact and both motions raise only questions of law, summary judgment is appropriate in this case.

The undisputed facts are as follows. Plaintiffs are three individuals who have been convicted of felony offenses in the State of Washington. Pursuant to the judgment and sentence entered in each case, each plaintiff was required to serve a period of confinement and to satisfy a number of other conditions, including the payment of LFOs. Each plaintiff has satisfactorily completed all of the terms and conditions of their respective sentences except for payment of the LFOs. Each plaintiff is currently making regular monthly payments towards their LFOs. However, because each is indigent, none is able to pay more than $10 - $20 per month. Accordingly, it will likely take years before each plaintiff will be able to complete the payments. Until the payments are completed the plaintiffs are unable to take the oath required for voter registration pursuant to RCW 29A.08.230 and thus each is unable to lawfully register to vote or cast a ballot.

DISCUSSION

Remarkably little is said in the Federal Constitution regarding the right to vote. It is mentioned almost in passing in Article I, Sections 2 and 4.[2] Yet, the right to vote has long been recognized as fundamental in a democratic society. *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964) ("Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society."). The right to exercise the franchise has been acknowledged as the right by which all other rights are preserved. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("[T]he political franchise of voting is…regarded as a fundamental political right, because preservative of all rights.").

On the other hand, the Washington State Constitution directly and explicitly guarantees the citizens of this state the right to vote in free and equal elections. Thus, not only has the right to vote has been held to be a fundamental right under our own state constitution. *Malim v. Benthien*, 114 Wash. 533 (1921), it has been held that our Constitution goes further to safeguard the right to vote than does the Federal Constitution. *Foster v. Irrigation District*, 102 Wn.2d 395, 404 (1984).

[2] In Article I, Section 2 it states in part: The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature…. Section 4 states in part: The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but congress may at any time by law make or alter such regulations, except as to the places of choosing senators….

Accordingly, in the instant matter there is no dispute that the right to vote is protected by the Equal Protection Clause of 14th Amendment to the Federal Constitution and by Article I, Section 12 of the Washington State Constitution, the Privileges and Immunities Clause. And because the right to vote is a fundamental one, it may not be denied or otherwise restricted unless the state can show that the denial or restriction furthers a compelling state interest. *Kramer v. Union Free School Dist.*, 395 U.S. 621, 626 (1969); *Seattle v. State*, 103 Wn.2d 663, 670 (1985).

Nor is it disputed that the state may, consistent with the 14th Amendment, deny the right to vote to persons who have been convicted of felony offenses. *Richardson v. Ramirez*, 418 U.S. 24 (1974); *Fernandez v. Kiner*, 36 Wn.App. 210 (1983). In *Richardson*, three felons who had completed the terms and conditions of their sentences were refused registration to vote in three California counties. They sued the election officials, claiming, among other things, that the refusal to allow them to register violated the Equal Protection Clause of the 14th Amendment. The California Supreme Court agreed. It found that the state was unable to demonstrate a compelling interest in denying plaintiffs' the fundamental right to vote. However, on appeal, to the United State Supreme Court, the decision was reversed.

The *Richardson* Court observed that while it had never considered the precise question of whether a state may constitutionally exclude some or all convicted felons from the franchise, it had indicated approval of such exclusions on a number of occasions. As an example the Court cited *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 53 (1959), where it held that:

> Residence requirements, age, previous criminal record are obvious examples indicating factors which a State may take into consideration in determining qualifications of voters. (citations omitted).

Thus, when confronted directly with the issue of whether a state could constitutionally deny all felons the right to vote, the *Richardson* Court easily found that Section 1 of the 14th Amendment could not have intended to prohibit felon disenfranchisement when the Section 2 of the 14th Amendment expressly approved denial of the franchise to persons who had participated in "rebellion, or other crime."

Some federal courts have interpreted *Richardson* to mean that once a person loses the right to vote by virtue of a felony conviction, then that person no longer has a fundamental interest in the right to vote. *Baker v. Cuomo*, 58 F.3d 814 (2nd Cir. 1995); *Owens v. Barnes*, 711 F.2d 25 (3rd Cir. 1983), cert. den. 464 U.S. 963 (1983). In *Baker* and *Owens*, the respective courts considered similar New York and Pennsylvania statutes. Each statute

provided that non-incarcerated felons had the right to vote, while the right was denied to incarcerated felons. At issue was whether this state created distinction, as it applied to the right to vote, violated the Equal Protection Clause. Each court held that the Equal Protection Clause was applicable, but because a felon had no fundamental interest in the right to vote, the state need not establish that the distinction was necessary to further a compelling state interest. The discrimination was lawful so long it was supported by some rational reason.

Plaintiffs claim that they do not take issue with the holding in *Richardson*. They argue, however, that Washington has not simply taken the lawful step of disenfranchising felons, it has taken the further step of creating a process by which felons can regain the right to vote. Plaintiffs contend that when the state engages in this process of re-enfranchising or re-distributing the vote it must be done in a manner consistent with the 14th Amendment and Article I, Section 12. In other words, any restriction on the re-distributed right must be in furtherance of a compelling state interest. Since none has been shown, plaintiffs argue, it is unconstitutional to deny them the right to vote.

In support of this argument, plaintiffs rely on a host of cases such as *Dunn v. Blumstein*, 405 U.S. 330 (1972), *Kramer*, supra, and *Harper v. Va.*

State Bd. of Elections, 383 U.S. 663 (1966), which stand for the proposition that "if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Kramer*, supra at 627. However, these cases are pre-*Richardson* and do not take into account the holdings in *Baker* and *Owens* that felons have no fundamental interest in the right to vote. In order for the plaintiffs' argument to have merit, the court would have to conclude that the state, by creating a re-enfranchisement process, has resurrected plaintiffs' fundamental interest in the right to vote. No case has been cited in support of such a conclusion.

Accordingly, the court concludes that while the Equal Protection Clause applies to plaintiffs' claim, the proper analysis is to determine whether there exists any rational basis for the state to deny them the right to vote, while granting that right to others who have been convicted of felony offenses.

For purposes of this analysis, the state contends that the relevant distinction to be considered is between felons who have completed the conditions of their sentence and those who have not. It is rational, the state argues, to continue the disenfranchisement of those felons who have not

completed all the terms and conditions of their sentences since the failure to do so proves them unwilling to abide by the laws that result from the electoral process. In addition, it is rational for the legislature to require, as a matter of policy, that all conditions of a sentence be completed before a felon regains the right to vote, instead of distinguishing among particular elements of a felony sentence.

However, the distinction the state would have the court address and its purported rationale do not address the argument raised by plaintiffs. At issue is not the broad question of whether the state may properly distinguish between those who have completed all sentence conditions and those who have not. But rather, the narrower question of whether there is a rational justification for the state to grant the right to vote to felons who are able to pay their LFOs immediately, while denying the right to those, such as plaintiffs, who, by reason of indigency, require a period of time to pay them. *Cf. United States v. Parks*, 89 F.3d 570, 573 n.5 (9th Cir. 1996). On this issue, the relationship between the reasons given and the state's asserted goals is difficult to discern.

The state offers no explanation for its assertion of a rational relationship between the ability to pay one's LFOs immediately and a willingness to abide by the law. There is no logic in the assumption that a

person in possession of sufficient resources to pay the obligation immediately is the more law-abiding citizen, indeed, the better example of respect for our justice system may very well be the indigent who manages for years to make monthly payments toward the obligation. Nor has the state explained how denying the right to vote is rationally related to state's interest in collecting on the LFOs. Denying plaintiffs the right to vote does not enhance their ability to pay any more quickly than the monthly payments they are already making. Even in the absence of heightened scrutiny, it is well settled that "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985). [3]

Moreover, discrimination on the basis of wealth and property has long been disfavored. *Edwards v. People of State of California*, 314 U.S. 160 (1941), *Griffin v. Illinois*, 351 U.S. 12 (1956), *Douglas v. People of State of California*, 372 U.S. 353 (1963). It is well recognized that there is simply

[3] It is of some significance that in the instant matter the sole apparent distinction between felons who have had their voting rights restored and those who have not is simply whether they have paid their LFOs. In all other respects, the effect of their felony criminal history remains identical. Moreover, obtaining a certificate of discharge in no way implies that an offender has been rehabilitated or is otherwise better able to participate in the electoral process. RCW 9.94A.637(4) provides in pertinent part:

> …the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

no rational relationship between the ability to pay and the exercise of constitutional rights. (See *Zablocki v. Redhail*, 434 U.S. 374 (1978), "…a persons ability to pay money demanded by the State does not justify the total deprivation of a constitutionally protected liberty." Steward, J. concurring.)

In *Griffin*, supra, for example, the court explained that the state could not condition the right to appeal a criminal conviction on the defendant's ability to pay for a trial transcript because there was no rational relationship between the ability to pay for the transcript and a defendant's guilt or innocence. In the area of voting rights, the lack of a rational relationship between wealth and one's ability to intelligently participate in the electoral process is well-established. In *Harper*, supra at 668, the Court observed that "[t]o introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor."

Thus, the court concludes that the state has not shown a rational relationship between a felon's ability to immediately pay LFOs and a denial of the right to vote. Accordingly, the Washington re-enfranchisement scheme which denies the right to vote to one group of felons, while granting that right to another, where the sole distinction between the two groups is the ability to pay money, violates the Equal Protection Clause of the 14th

Amendment to the U.S. Constitution and Article I, Sections 12 and 19 of the Washington State Constitution and is constitutionally impermissible.[4]

Plaintiffs' motion for summary judgment is granted. Plaintiffs are entitled to register to vote and are eligible to sign the oath required by RCW 29A.08.230.[5] Defendants' motion for summary judgment is denied.

Dated this 27th day of March, 2006.

Judge Michael S. Spearman

[4] The court declines plaintiffs' invitation to examine their claims under the Privileges and Immunities Clause of the Washington State Constitution separate from an analysis under the Federal Equal Protection Clause.

[5] Pursuant to RCW 29A.08.651 the Secretary of State is required to maintain a statewide voter registration data base which contains the name of every legally registered voter in the state. The secretary of state must review and update the records of all registered voters on the list on a quarterly basis to make additions and corrections. Because today's decision will require the secretary to examine and review a number of different data bases and because only four days remain in the first quarter, it is unrealistic to expect the secretary of state to incorporate the effects of today's ruling until the 2006 second quarter review.